

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEFORGE MARITIME TOWING, LLC,

Plaintiff,

v.

HAMILTON CONSTRUCTION, LLC,

Defendant.

CASE NO. C23-0827-JCC

BENCH TRIAL—PRELIMINARY  
ORDER

This matter comes before the Court after the June 9–11 bench trial involving DeForge Maritime Towing, LLC’s (“DeForge”) complaint against Hamilton Construction, LLC for breach of contract (Dkt. No. 1).<sup>1</sup> Having thoroughly considered the evidence and argument submitted at trial, the Court makes the following findings *on a preliminary basis*.

DeForge has proven by a preponderance of the evidence that Hamilton breached the parties’ Charter Agreement (“Charter”) when (a) the THELMA 302 (“Thelma”) grounded or touched bottom; (b) Hamilton did not return the Thelma in the same good order and condition, ordinary wear and tear excepted, as when delivered and accepted; and (c) Hamilton did not pay a

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<sup>1</sup> This case was consolidated with *DeForge Maritime Towing, LLC, v. Jeff Hamilton, et al.*, C24-0369-JCC. (See Dkt. No. 20 at 2–3.) Only Mr. Hamilton remains from that action. (See Dkt. No. 39 at 1.) A settlement between Travelers Casualty Insurance Company and DeForge (solely in that matter) specified that it did not affect this action. Therefore, as a preliminary matter, the Court FINDS that Hamilton is not due any set-off from the settlement.

1 portion of the charter hire due.

2 Specifically, on DeForge's First Claim for Relief, the Court FINDS the Thelma grounded  
3 or touched bottom on October 6, 2022, while on charter to Hamilton. This resulted from  
4 Hamilton's negligent operation of a tugboat, when its tow line became tangled in its propeller.  
5 The tugboat then maneuvered aggressively but in vain to prevent the barge from grounding. This  
6 caused physical damage beyond ordinary wear and tear to the Thelma's port and starboard sides  
7 (although not its bottom). Under the Charter, Hamilton was obliged to repair these damages to  
8 restore the Thelma to its prior condition. It has not done so. This is a breach of the Charter. Thus,  
9 DeForge shall be awarded the reasonable cost of repair, as proven at trial: \$170,546.11,<sup>2</sup> along  
10 with reasonable attorney fees in an amount to be proven through subsequent briefing.

11 On DeForge's Second Claim for Relief, the Court FINDS that Hamilton has not paid  
12 charter hire since December 22, 2022. But on December 16, 2022, DeForge and Hamilton  
13 entered a separate agreement via text messages allowing Hamilton to return the Thelma to  
14 Bellingham, Washington, complete the off-hire survey, and then allow DeForge to rent moorage  
15 from Hamilton. This agreement superseded the Charter, at least as to the conditions terminating  
16 the Charter. Because the off-hire survey was completed in Bellingham on February 9, 2023, the  
17 original Charter terminated then, and DeForge is due unpaid charter hire through that date at  
18 \$3,100 per day, for a total of \$151,900.

19 On DeForge's Third Claim for Relief, the Court FINDS that DeForge is not due retaking  
20 expenses for transporting the Thelma from Bellingham to Tacoma, Washington, because  
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22 <sup>2</sup> After its charter to Hamilton, DeForge was able to continue to charter and use the Thelma  
23 without immediate repairs. Accordingly, DeForge is only due the cost it would incur for steel  
24 and paint repairs at its next regularly scheduled drydocking—not those costs associated with  
25 subsequent charter hire, retaking from Hamilton, or immediate drydocking. Specifically, the  
26 costs awarded are as follows: \$26,348.50 for steel and paint, \$125,233.00 for labor and fuel,  
\$5,714.13 for hull insurance and surveys, and \$13,250.48 for estimated contingencies. This  
represents the cost of restoring the Thelma to its condition prior to Hamilton's charter and limits  
any windfall to DeForge.

1 DeForge agreed that Hamilton was allowed to return the barge to Bellingham, as explained  
2 above.

3 The parties shall submit joint proposed findings of fact and conclusions of law in accord  
4 with this Preliminary Order within fourteen (14) days. With this, the Court will enter a final  
5 order containing detailed findings of fact and conclusions of law.

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7 DATED this 18th day of June 2024.

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11 John C. Coughenour  
12 UNITED STATES DISTRICT JUDGE  
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